

## ENHANCE THE EFFECTIVENESS OF INTERNATIONAL FISHERY CONSERVATION PROGRAMS

AUGUST 6, 1971.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Mr. GARMATZ, from the Committee on Merchant Marine and Fisheries,  
submitted the following

### REPORT

[To accompany H.R. 3304]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 3304), to amend the act of August 27, 1954 (commonly known as the Fishermen's Protective Act) to conserve and protect Atlantic salmon of North American origin, having considered the same, report favorably thereon with amendments and recommend that the bill H.R. 3304 as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert the following:

That the Fishermen's Protective Act of 1967 (68 Stat. 883, as amended; 82 Stat. 729), is amended by inserting at the end thereof the following new section:

SEC. 8(a). When the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President. Upon receipt of such certification, the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of fish products of the offending country for such duration as he determines appropriate and to the extent that such prohibition is sanctioned by the General Agreement on Tariffs and Trade.

(b) Within 60 days following certification by the Secretary of Commerce, the President shall notify the Congress of any action taken by him pursuant to such certification. In the event the President fails to direct the Secretary of the Treasury to prohibit the importation of fish products of the offending country, or if such prohibition does not cover all fish products of the offending country, the President shall inform the Congress of the reasons therefore.

(c) It shall be unlawful for any person subject to the jurisdiction of the United States knowingly to bring or import into, or cause to be imported into, the United States any fish products prohibited by the Secretary of the Treasury pursuant to this section.

(d) (1) Any person violating the provisions of this section shall be fined not more than \$10,000 for the first violation, and not more than \$25,000 for each subsequent violation.

(2) All fish products brought or imported into the United States in violation of this section, or the monetary value thereof, may be forfeited.

(3) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with this section.

(e) (1) Enforcement of the provisions of this section prohibiting the bringing or importation of fish products into the United States shall be the responsibility of the Secretary of the Treasury.

(2) The judges of the United States district courts, and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and regulations issued thereunder.

(3) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this section.

(4) Such person so authorized shall have the power—

(A) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States committing in his presence or view a violation of this section or the regulations issued thereunder;

(B) with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States, and, if as a result of such search he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this section or the regulations issued thereunder, then to arrest such person.

(5) Such person so authorized, may seize, whenever and wherever lawfully found, all fish products brought or imported into the United States in violation of this section or the regulations issued thereunder. Any fish products so seized may be disposed of pursuant to the order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary of the Treasury after consultation with the Secretary of Health, Education and Welfare.

(f) The Secretary of the Treasury is authorized to prescribe such regulations as he determines necessary to carry out the provisions of this section.

(g) As used in this section—

(1) The term "person" means any individual, partnership, corporation, or association.

(2) The term "United States", when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.

(3) The term "international fishery conservation program" means any ban, restriction, regulation or other measure in force pursuant to a multi-lateral agreement to which the United States is a signatory party, the purpose of which is to conserve or protect the living resources of the sea.

(4) The term "fish products" means fish and marine mammals and all products thereof taken by fishing vessels of an offending country whether or not packed, processed or otherwise prepared for export in such country or within the jurisdiction thereof.

Amend the title so as to read :

A bill to amend the Fishermen's Protective Act of 1967 to enhance the effectiveness of international fishery conservation programs.

#### PURPOSE OF THE LEGISLATION

The purpose of the legislation is to authorize the President to prohibit the importation of fishery products from nations which conduct fishing operations in a manner that diminishes the effectiveness of international fishery conservation programs upon certification by the Secretary of Commerce.

## LEGISLATIVE BACKGROUND

Congressman Pelly introduced H.R. 3304 on February 2, 1971, for himself and Congressmen Keith, Conte, Wyatt, Goodling, McCloskey, Don H. Clausen, Wylie, Hathaway, Scott, Sandman, King, Dent, Rogers, Pike, Pirnie, Talcott, Johnson of California, Lennon, Hosmer, Blackburn, Steele, Coughlin, Horton and Clark. Identical bills, H.R. 3305 and 3841, were also introduced by Congressman Pelly with Congresswoman Dwyer and Congressman Hicks of Washington, Thompson of Georgia, Halpern, Williams, Rees, Lent, Hogan, Miller of California, Burke of Massachusetts, Mrs. Hicks of Massachusetts, Biaggi, Meeds, McCormack, Sisk and St Germain, as co-sponsors. Congressmen Cleveland and Wyman introduced identical bills, H.R. 4928 and H.R. 7242, respectively.

Hearings were conducted by the Fisheries and Wildlife Conservation Subcommittee on May 24, and July 8, 1971. Testimony was received from Congressman Silvio Conte, Chalmers P. Wylie and James C. Cleveland; representatives of the Department of State, Interior, Commerce and Treasury and representatives of the following interested conservation groups: Trout Unlimited, Committee on the Atlantic Salmon Emergency, National Wildlife Federation, International Atlantic Salmon Foundation, and the Fly Fishermen's Association.

Initially, representatives of the various departments acknowledged the need for action to protect the Atlantic Salmon from high seas fishing, but did not favor the oblique approach suggested by H.R. 3304. In this regard their statements paralleled the agency reports. Subsequently, Departments of State and Commerce witnesses expressed views favoring the import ban approach subject to amendment of the bill as discussed in detail below.

All other witnesses before the Committee favored the concept of prohibiting the importation of fishery products in the interest of conservation as set forth in H.R. 3304. With respect to Atlantic Salmon, the hope was generally expressed that an effective ban on high seas fishing would be accepted by all of the principal fishing nations at the June annual meeting of the International Northwest Atlantic Fisheries Commission.

As introduced, H.R. 3304 directed the Secretary of Commerce, whenever he determines that nationals of a foreign country are conducting fishing operations which diminish the effectiveness of domestic conservation programs for Atlantic Salmon of North American origin, to certify such fact to the Secretary of the Treasury. Upon receipt of such certification, the Secretary of the Treasury was directed to prohibit the importation into the United States of any fish products of the offending country.

H.R. 3304, as reported by the Committee, differs substantially from the bill as introduced. The scope of the legislation has been expanded to include all international fishery conservation programs as opposed to domestic United States programs dealing only with North American Atlantic Salmon. Authority to prohibit importation of fish products has been vested in the President upon certification by the Secretary of

Commerce. The President has full discretion in exercising this authority, however, he must advise the Congress of his actions or explain his inaction if such be the case, within 60 days following a certification by the Secretary of Commerce. These changes and other technical revisions to the bill are designed to meet all objections raised by departmental witnesses and agency reports.

H.R. 3304, with amendments, was ordered reported by the Committee unanimously by voice vote, a quorum being present.

#### NEED FOR THIS LEGISLATION—THE ATLANTIC SALMON PROBLEM

Anadromous fish begin their life in fresh water, where they live for varying periods, then migrate to salt water—the oceans—where they usually spend most of their adult lives and finally return to fresh water usually to the stream of their birth where they spawn and die having completed their life cycle. During their ocean life anadromous fish migrate through territorial and international waters, and as a result, their conservation depends upon the cooperation of all nations engaged in high seas fisheries.

The taking of anadromous fish on the high seas is inherently wasteful and contrary to sound conservation of the resource. Adequate numbers of fish must be permitted to return to their native streams to insure the continued survival of these inland bodies of water as spawning grounds.

Salmon are the most notable example of anadromous fish. They are a valuable commercial, as well as sport fish. Off the west coast of the United States the Steelhead is the principal sports fish of the Salmon family. In the Atlantic, the similar Atlantic Salmon is a highly prized sports fish. Historically, salmon fishing in the streams of Scotland has been regarded as the ultimate in the sport of fishing.

On both sides of the Atlantic the Salmon is highly prized. In the Maritime Provinces of Canada alone there are estimated to be over 16,500 nets designed to take the Salmon as they enter fresh water while permitting sufficient numbers to migrate to the spawning grounds.

In the New England states where the Salmon once abounded, pollution of fresh water rivers and streams has taken a heavy toll. Millions of dollars are being spent to abate this pollution, restore the water and restock the rivers with Salmon. In an arc stretching from New England to Ireland, many thousands of people rely upon the Atlantic Salmon for their livelihood—as fishermen, guides, cooks and the innumerable other occupations linked to sports fishing.

The use of nets on the high seas as opposed to close inshore results in the taking of immature salmon and nullifies all efforts to insure an adequate run in each salmon stream. Salmon from Europe, Canada, and the United States are intermingled and their origins can only be determined by trained scientists after being taken on board ship.

Until 1960 the ocean migration of the Atlantic Salmon was essentially unknown, the taking of Atlantic Salmon was limited to those inshore waters where the fish congregate for their upstream migration. Sophisticated electronic equipment now enables man to probe the depths of the sea and locate schools of fish with great accuracy. It is no longer a question of chance.



Utilizing sonic echo recording gear Danish fishermen discovered that Atlantic Salmon schools concentrate during winter months in the Davis Straits between Labrador and Greenland. Commercial high seas fishing for Atlantic Salmon resulted. The Danish catch rose to over 900 tons in 1969. Norway and Sweden took 250 tons and 30 tons respectively. By comparison, the total high seas catch in 1965 was 36 tons.

The International Convention for the Northwest Atlantic Fisheries, better known as ICNAF, which entered into force in 1950, is composed of 15 nations bordering the North Atlantic Ocean or actively engaged in fishing in those waters. It has as its purpose the protection and conservation of the fishery resources of the Northwest Atlantic in order to maintain the stocks of fish at a level permitting the maximum sustained catch. The growing threat to Atlantic Salmon prompted the ICNAF Commission to adopt a ban on high seas fishing for this species in 1969. The ban was accepted by most member countries permitting this conservation measure to enter into force. Denmark, the Federal Republic of Germany and Norway objected to such a ban, however, and under the terms of the convention are free to ignore the ban.

The failure of Denmark to recognize the ICNAF ban on Salmon fishing effectively nullified this measure. As a result efforts were undertaken to freeze the catch at approximately the 1969 level. Denmark agreed to such a freeze and a quota of 1,200 tons of Salmon was adopted by the ICNAF Commission for the 1971 season. The quota was extended for the 1972 season after the three abstaining member countries again refused to agree to a total ban or even a reduction in the quota to phase out their fishing and re-establish their fishermen in other areas.

It must be emphasized that the quota merely prevents further acceleration of high seas fishing for Atlantic Salmon. This interim measure permits continued fishing at an already dangerously high level from the standpoint of long range conservation. It will not prevent the eventual destruction of this valuable sports fish.

The position of Denmark is most difficult to understand. Danish officials have repeatedly denied that the species is in danger of extinction or that there is any evidence to indicate that their fishing industry is depleting the salmon stock. Unfortunately, the only evidence which will prove such depletion beyond a shadow of doubt will be the virtual absence of fish returning to their native streams. By then it will be too late. World opinion to the contrary, Denmark appears determined to continue high seas fishing for Atlantic Salmon.

The Committee hearing on May 24, 1971, preceded by one day the annual meeting of ICNAF in Halifax, Nova Scotia. The hope expressed by witnesses that action at the Halifax meeting would resolve this issue was ill founded. Departmental witnesses who appeared at the July hearings testified in light of this failure. Their statements reflected new awareness, missing from departmental reports, that extraordinary measures are required to reverse the destructive exploitation of salmon.

Witnesses for the Departments of State and Commerce (National Marine Fisheries Service) recommended that the legislation be amended so that international conservation programs or measures rather than domestic programs be the conservation yardstick for meas-

uring foreign fishing activities and that an element of flexibility be introduced. It was further developed that the legislation should not be geared exclusively to conservation of the North Atlantic Salmon, but should be applied generally to international fishery conservation programs.

The Committee concurs in these recommendations and has substantially revised the bill along these lines.

A question arose during the July hearing over the retroactive effect of this legislation. The Committee wishes to make it clear that upon enactment the responsibility of the Secretary of Commerce and the authority of the President relate to then existing international fishery conservation measures as well as such measures as may be adopted thereafter.

While the North Atlantic Salmon is of critical concern to the Committee, the authority set forth in this legislation may prove valuable in dealing with other heavily fished species should conservation measures be adopted to preserve their abundance. The general level of fishing for all commercially desirable species has risen dramatically during the past decade. The highly productive fishing grounds off New England—the Grand Banks and Georges Bank have been subjected to a level of fishing activity which cannot continue indefinitely. The potential denial of American markets may cause some of the countries which have contributed to this conservation nightmare to become more amenable; a pious hope perhaps but at least one worth pursuing.

#### SECTION-BY-SECTION ANALYSES

H.R. 3304, as reported, amends the Fishermen's Protective Act of 1967 by adding a new section 8 at the end thereof to provide as follows:

Section 8 (a) directs the Secretary of Commerce to certify to the President the fact that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program whenever he determines the existence of such operations.

The President in turn may then direct the Secretary of the Treasury to prohibit the bringing or importation in the United States of fish products of the offending country, i.e. the country whose nationals are conducting such fishing operations. The President may fix the duration of the prohibition or may leave the ban open ended. The prohibition may extend to all fish products as defined in Section 8(g) or may be limited to specific products in the judgment of the President consistent with the General Agreement on Tariffs and Trade (GATT).

Article XX of GATT provides in part as follows:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

\* \* \* \* \*

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

The Department of State in its report on this legislation stated in part:

Consideration might be given, therefore, to the adoption of appropriate measures applicable to nations conducting their fishing operations contrary to widely observed international conservation regulations. Properly drawn, such measures would not violate the international trade obligations or commercial policy of the United States. While the use of trade sanctions is generally inconsistent with our obligations and policies, it is recognized as appropriate to apply limited restrictions to trade to achieve comparability between the treatment afforded domestic and foreign interests in carrying out such conservation regulations.

This is of course exactly what the Committee has done in revising the legislation.

The extent to which fish products may be subjected to a general embargo within the framework of Article XX of GATT as opposed to an embargo covering only the species protected by an international conservation program has not been resolved by the Department of State. For this reason Section 8(a) expressly recognizes the potential limitations imposed upon the President by GATT.

The Committee is of the strong opinion that Article XX of GATT does not limit the President to declaring an embargo upon Danish salmon, for example, but that the President may embargo all Danish fishery products in order to emphasize our opposition to Denmark's high seas salmon fishery. The monetary value of a single specie of fish may be insignificant thus nullifying the purpose of this legislation if such a narrow interpretation of the GATT conservation provision is adopted.

In the case of Atlantic Salmon, Danish exports to the United States totalled 54,365 pounds in 1970 worth \$63,844.00. Imports of all Danish fish products totalled 31,656,000 lbs. valued at \$10,543,298. The impact of losing a 10 million dollar market as opposed to a 63 thousand dollar market is obvious.

The Committee sincerely hopes that it will not be necessary for the President to invoke the powers granted by this legislation. Yet, if any nation refuses to cooperate with sound international conservation measures, it should expect that the President will act promptly and firmly.

Section 8(b) requires the President to notify the Congress of any action taken pursuant to a certification by the Secretary of Commerce. This information shall be furnished within 60 days of such certification and if the President has not utilized the authority granted by Section 8(a) he shall inform the Congress of the reasons therefore. In a similar vein if any import prohibition does not extend to all fish products of the offending country, he must advise Congress of the reasons for such a partial embargo.

In view of the State Department's inability to furnish the Committee a definitive interpretation of Article XX of GATT, the Committee considers this reporting provision essential to its oversight responsibility. It will also insure that the Congress is made aware of the failure of any foreign country to abide by an international fishery conservation program.

Section 8(c) declares it to be unlawful for any person subject to the jurisdiction of the United States knowingly to bring or import into the United States any fish products prohibited by the Secretary of the Treasury.

Section 8(d) establishes fines for violation of this section; provides for forfeiture of illegal imports and provides for general application of the customs laws.

Section 8(e) vests enforcement responsibilities in the Secretary of the Treasury and provides for issuance of warrants, arrest and seizure.

Section 8(f) authorizes the Secretary of the Treasury to prescribe regulations to implement this section.

Section 8(e) defines the terms "person," "United States," "international fishery conservation program" and "fish products."

The term "United States" has been amended to exclude those areas where the Department of the Treasury does not have customs enforcement jurisdiction. This is in accord with the Treasury report.

The term "international fishery conservation program" adopted by the Committee in lieu of the restrictive language "domestic conservation programs of Atlantic salmon of North American origin" is defined to include any ban, restriction, regulation or other measure in force pursuant to a multi-lateral agreement to which the United States is a party, the purpose of which is to conserve or protect the living resources of the sea.

The Committee wished to be absolutely certain that the ICNAF ban on the taking of Atlantic Salmon now in force would qualify under the foregoing definition.

The Department of State advised the Committee as follows:

The 1969 annual meeting of the International Commission for the Northwest Atlantic Fisheries adopted a proposal to institute a total ban on fishing for salmon within the entire convention area outside national fisheries limits. That proposal was then referred to governments for acceptance or rejection. On December 19, 1969 a Protocol to the Convention entered into force which changed the procedure for entry into force of such fisheries regulatory proposals. The Depositary Government suggested that the new procedure be applied to outstanding regulatory proposals, such that for a total ban on salmon fishing, in the absence of objectives. Under this new procedure the total ban became effective on April 3, 1970 for 11 members of the Commission. They are Canada, France, Iceland, Italy, Poland, Portugal, Romania, Spain, USSR, UK, and USA. The proposal subsequently became effective for Japan when it adhered to the Convention on July 1, 1970. The ban did not take effect for Denmark, the Federal Republic of Germany, and Norway which pre-



sented objections to it under the Protocol's provisions. No formal objections were lodged to the Depositary Government's interpretation although some questions were raised as to its legality. However, it should be noted that both the 1970 and 1971 compromise proposals on salmon adopted by the Commission specifically recognize the existence of the ban. Both of these compromise proposals were adopted with an affirmative vote by the three nations which had objected to the ban. Accordingly, there can be no doubt that the ban is in effect for 12 of the 15 nations which are members of the Commission.

We consider that this regulation constitutes an internationally agreed conservation measure which is widely observed and which could serve as the basis for restrictions on imports from nations failing to abide by this conservation measure under legislation which might be adopted along the lines suggested by the Department in its report of July 7, 1971 on H.R. 3304. I should note, however, that the Department does not consider that the substitution of a phrase concerning proposals adopted by the Commission for the present wording of the bill on domestic conservation programs would suffice to modify the bill along the lines suggested by the suggested by the Department. Rather, it is our view that a clean bill would have to be drafted along the lines suggested by the Department to overcome our objections to H.R. 3304. The Department would be pleased, I am sure, to assist the Committee in preparing such a clean bill, together with the other interested agencies of Government.

It is our view that such a clean bill, if properly drafted, would apply retroactively to such conservation measures (which would have to be defined in the bill) already in effect at the time of enactment of such legislation. That is to say, the provisions permitting restrictions on imports of fish or fish products to the United States would not apply only to conservation measures adopted subsequent to its enactment. The purpose of such legislation would be substantially defeated if it were only to apply to future regulations. It might be desirable, however, to include in the bill a grace period before its provisions could be implemented with regard to internationally agreed conservation regulations already in effect in order to allow nations not observing them to review their position. It is our understanding that such import restrictions might be applied to any nation not observing widely observed international conservation regulations, whether or not they were members of the international commission or parties to the international agreement adopting such regulations, and whether or not they as a member of the international commission or party to the international agreement were within their rights in the commission or under the agreement in declining to accept the conservation measure in question.

Similarly the Department of Commerce, National Oceanic and Atmospheric Administration, stated:

In response to your letter of July 15, 1971, regarding the testimony of Mr. William Terry on H.R. 3304, on July 8, 1971, I am happy to reaffirm Mr. Terry's testimony to the effect that there is now in force an ICNAF ban on high seas fishing for Atlantic salmon and that, assuming the retroactive character of the legislation, the existence of this ban would, under the terms of H.R. 3304, authorize the President to impose sanctions against countries which do not abide by that ban whether or not they are members of ICNAF and whether or not, if members of ICNAF, they have not accepted the ban.

It does occur to me that some question may arise as to the extent to which such an interpretation of the statute would be consistent with the international law on treaties, but on this point we would defer to the Department of State.

With regard to the retroactive character of H.R. 3304, we would have no objection to its being interpreted as applying to measures in force on the date of its enactment.

In commenting upon the broadened concept of an international conservation measure, Departmental witnesses frequently prefaced that concept with the term "widely held," apparently suggesting that a substantial number of countries must adhere to a conservation program before the United States may give it such credence as to warrant the imposition of trade sanctions for its breach. The Committee does not accept such a notion but believes rather that all multi-lateral conservation agreements, be there 3 or 15 signatory nations, stand on an equal footing. The key to the application of this legislation is not the number of signatories but whether the conservation measure is in force pursuant to the agreement's terms.

The term "fish products" includes the whole fish and all products thereof as for example fish sticks, fillets, oil and flour. The term also embraces marine mammals. The definition makes it clear that country of final export to the United States is not relevant. It is fish products taken by fishing vessels of an offending country which may be denied entry into the United States. The fact that such fish are shipped to a third country for processing or packaging before export to the United States would not alter their status. Should the Committee determine that offending countries are attempting to circumvent the thrust of this legislation by employing non-national flag fishing vessels or by any other subterfuge, appropriate steps will be taken.

#### COST OF THE LEGISLATION

Inasmuch as this legislation is permissive it is not possible to estimate what additional Customs enforcement personnel or funds might be required. It is not anticipated that the enactment of this legislation will require additional appropriations for the Department of Commerce.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill, as reported, does not change existing law.

DEPARTMENT OF STATE,  
Washington, D.C., July 7, 1971.

HON. EDWARD A. GARMATZ,  
*Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Your letter of February 19, 1971, requested the views and recommendations of the Department of State on H.R. 3304, a bill to amend the Act of August 27, 1954, to conserve and protect Atlantic salmon of North American origin. The bill would prohibit the importation into the United States of fish products from any foreign country whose nationals conduct fishing operations in a manner which diminishes the effectiveness of domestic conservation programs for Atlantic salmon of North American origin.

The Department agrees with the objectives of H.R. 3304 to promote the conservation of Atlantic salmon. It is nevertheless opposed to the enactment of the bill as drafted because unilateral action along the lines proposed could interfere with efforts in which the United States Government is engaged to achieve long-term international agreement on conservation measures applicable to Atlantic salmon through the International Commission on Northwest Atlantic Fisheries. The interim measures adopted by the Commission, while not fully satisfactory to the United States as a long-term solution to this problem, have halted the previous rapid increase in exploitation of Atlantic salmon on the high seas and have provided support to the domestic conservation program. The Department favors pursuing the route of negotiations as long as prospects appear favorable for achieving our goals.

The unilateral application of an embargo on all fish products from countries because of failure of their nationals to follow United States conservation rules for Atlantic salmon would subject the United States to demands for compensation or threats of retaliatory action against American exports by the affected countries. It would be maintained that the embargo was contrary to our commercial agreements and in particular to the General Agreement on Tariffs and Trade.

The proposed legislation would apply to a single conservation problem and to a very limited number of countries. There are a number of other important fisheries conservation problems facing the United States which also must be dealt with. Implementation of internationally agreed fishing rules may encounter difficulties if foreign fishermen operating in conflict with these rules have unqualified access to markets of those abiding by the rules. Consideration might be given, therefore, to the adoption of appropriate measures applicable to nations conducting their fishing operations contrary to widely observed international conservation regulations. Properly drawn, such measures would not violate the international trade obligations or commercial policy of the United States. While the use of trade sanctions is generally inconsistent with our obligations and policies, it is recognized as appropriate to apply limited restrictions to trade to achieve

comparability between the treatment afforded domestic and foreign interests in carrying out such conservation regulations.

Measures adopted for this purpose, of course, should assure that the American market remains open to fish suppliers of all nations abiding by the internationally agreed conservation rules binding on American fishermen. The measures, moreover, to best serve the overall interests of our country should be applied with discretion. The President should have the authority to determine in individual cases the extent of the action which would, consistently with our international obligations, be applied to the importation of fishery products from countries not applying the widely observed conservation rules. In addition, any such measures should be designed to minimize the administrative and enforcement problems that could arise; the Department of State defers to the views of the other interested agencies in this respect.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

DAVID M. ABSHIRE,  
*Assistant Secretary for Congressional Relations.*

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
*Washington, D.C., August 3, 1971.*

HON. EDWARD A. GARMATZ,  
*Chairman, Committee on Merchant Marine and Fisheries,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to H.R. 3304, a bill to amend the Act of August 27, 1954 (commonly known as the Fisherman's Protective Act) to conserve and protect Atlantic salmon of North American origin.

H.R. 3304 would amend the unrelated Act of August 27, 1954, by adding authority to place an embargo on imports of fish products from any foreign country found to be "conducting fishing operations in a manner or in such circumstances which diminish the effectiveness of domestic conservation programs of Atlantic salmon of North American origin." The Secretary of Commerce would have responsibility for certifying to the Secretary of the Treasury when such fishing operations were being conducted, and the latter would have responsibility for instituting and enforcing the embargo.

We believe the bill should be amended by replacing the words "domestic conservation programs of Atlantic salmon of North American origin" on page 2, lines 4 and 5, with "conservation proposals for Atlantic salmon of the International Commission for the Northwest Atlantic Fisheries." Furthermore, we are not completely satisfied that a total embargo is warranted at this time. Possibly some lesser action should be prescribed initially, allowing the United States to assess the effectiveness of this kind of measure. In addition we recognize that a mandatory embargo has broad foreign policy implications on which issue we defer to the Department of State.



We agree with the intent of the proposed legislation. We believe, however, that any action taken in regard to this problem should be related to international rather than domestic conservation programs. International cooperation is essential if salmon are to be conserved during migrations on the high seas which are free for the use of all nations. The United States is actively supporting work within the International Commission for the Northwest Atlantic Fisheries (ICNAF) to develop a high seas salmon conservation program in the area where salmon of North American origin migrate. This Commission has authority to coordinate and develop high seas fisheries conservation programs by its 15 member nations, which include the principal countries fishing in the Northwest Atlantic.

At its Annual Meeting in 1970, ICNAF proposed a freeze on high seas salmon catches or fishing effort in the North Atlantic at the 1969 level. (In our view salmon fishing should only be permitted in the coastal and inshore areas where salmon return in the spawning season so that sufficient escapement for spawning purposes to home streams can be assured.) While we continue to favor a complete ban on high seas fishing for salmon, we have supported the freeze on high seas salmon fishing activities as proposed by ICNAF as an important first step toward more effective controls. The proposal in ICNAF was also supported by the principal countries taking Atlantic salmon on the high seas such as Denmark and Norway, and will become binding upon them early this year unless their Governments file formal objections. We have no indications at the present time that they plan such objections.

There is, of course, no certainty that an embargo on the products of the fisheries of a country that refuses to cooperate with the conservation measures described above would be effective to accomplish the desired results. The loss of U.S. markets for fishery products, however, would have definite impact on the fishing industries of countries that have been involved in the high seas fishery for Atlantic salmon. (U.S. imports of fish and fishery products in 1969 from Norway totaled \$30.5 million, and from Denmark \$9.0 million.)

It is useful to note that a similar approach was taken in the Tuna Conventions Act of 1950, as amended (16 U.S.C. 951-961). That Act authorizes, e.g., an embargo on imports of certain species of tuna from countries whose vessels act "in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations" of the Inter-American Tropical Tuna Commission.

We note that in describing the commodities subject to the prohibition against importation, the bill uses the term "fish products" in ten places. On page 5, line 3, the term is changed to read "fish food products." The reason for this distinction is not apparent.

Moreover, there could be a problem with the interpretation of the term "fish products." Some fish is imported into the United States with a minimum of processing and in order to make it clear that whole fish is included in the term describing the commodities subject to import prohibition we recommend that in the ten places where the term "fish products" appears and the one place where the term "fish food products" appears, that there be substituted the term "fish or fishery products." Such amendments would avoid any real problems of interpretation.

Enactment of the proposed legislation would not of itself create any impact on the environment, such as to require an environmental impact statement under the provisions of section 102(2)(c) of the National Environmental Policy Act of 1969.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM N. LETSON,  
*General Counsel.*

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, D.C., May 21, 1971.*

HON. EDWARD A. GARMATZ,  
*Chairman, Committee on Merchant Marine and Fisheries,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This responds to your request for our comments on H.R. 3304, a bill to amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act) to conserve and protect Atlantic salmon of North American origin. Our comments apply as well to H.R. 4928 and H.R. 7272, identical bills also pending before your committee.

H.R. 3304 would add a new section to the Fishermen's Protective Act of 1967 (68 Stat. 883, as amended; 22 U.S.C. 1971-1977). Under that section, the Secretary of the Treasury would be directed to prohibit the importation of fish products from a foreign country certified by the Secretary of Commerce to be "conducting fishing operations in a manner in such circumstances which diminish the effectiveness of domestic conservation programs of Atlantic salmon of North American origin". Graduated fines for first and subsequent violations of such prohibition would be imposed against persons subject to jurisdiction of the United States. Responsibility for enforcement is assigned to the Secretary of the Treasury, with actions cognizable in the District Courts of the United States, the highest court of its territories and possessions, and the High Court for the Trust Territory of the Pacific Islands.

This Department has long recognized that wasteful fishing on the Atlantic high seas constitutes a grave threat to our domestic salmon resource, and that domestic conservation, in which we are vitally interested, would be to no avail in the absence of effective international regulation. In quest of such regulation, the United States has participated since 1950 as a member of the International Commission for the Northwest Atlantic Fisheries. As the Committee is no doubt aware, the Commission is charged with investigation, protection and conservation of the fisheries of the Northwest Atlantic, and has functioned with considerable success to coordinate the fisheries conservation programs of its 15 member nations. While it remains our ultimate objective, and that of most member nations, to ban all high seas fishing for salmon, we have sought to impose quantitative restrictions on the high seas exploitation of Atlantic salmon. In 1969, a total of 1,204 metric tons were taken in the high seas off west Greenland, primarily by Den-

mark and its dependencies (924 tons), Norway (250 tons), and Sweden (30 tons). This catch was twice the size of that in 1968, and had increased from 36 tons in 1965.

At its 1970 annual meeting, ICNAF adopted additional regulatory proposals for the control of high seas fishing by Denmark and Norway. Though a total ban was adopted in 1969, it has not been accepted by a number of member nations and interim measures were believed necessary. Such interim limitations have therefore been accepted by all member nations for 1971. In addition, ICNAF and the International Council for the Exploration of the Sea (ICES) have formed a Joint Working Party to assess the effects of high seas fishing on the home water catches of Atlantic salmon. This group, including a biologist from our Bureau of Sport Fisheries and Wildlife, has been handicapped by a lack of scientific data on which to base its evaluation. The Working Party has proposed a large international tagging and research effort for 1972, and will urge participating countries to increase home water research activities.

Within the context of this increasingly successful international effort, we cannot recommend the adoption of a unilateral embargo, such as would be authorized by H.R. 3304. The Department of State is, of course, best qualified to assess the impact of an embargo upon relations with ICNAF nations and other members of the world community. We believe, however, that such action could be inconsistent with United States policy to seek world-wide protection of fish and wildlife resources through international agreement, and that an embargo would not be necessarily effective to reduce high seas exploitation of Atlantic salmon. It should be noted that the government of Denmark is aware of support in this country for economic sanctions, and fearful that its friendly relations with the United States are in jeopardy.

At a meeting with Danish officials last month, a distinguished delegation from the private Committee on the Atlantic Salmon Emergency (CASE) advised of its opposition to a boycott or embargo. The CASE delegation also attempted to distinguish the Baltic high seas fishery, of concern to European nations as a commercial resource, from that of the Northwest Atlantic, where the effect upon sport-fishing is of interest to the United States and Canada.

The Committee may be assured that this Department will accelerate its efforts to assure protection of the Atlantic salmon. These include active participation in ICNAF, as noted, and joint administration with the States of enhancement programs under authority of the Anadromous Fish Conservation Act. We appreciate the long standing concern of your Committee, and welcome the interest of conservationists from all parts of the United States. Both, we are confident, will be helpful in attaining the international regulation necessary to effective management of this important resource.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

HARRISON LOESCH,  
*Assistant Secretary of the Interior.*

DEPARTMENT OF AGRICULTURE,  
OFFICE OF THE SECRETARY,  
*Washington, D.C., July 7, 1971.*

HON. EDWARD A. GARMATZ,  
*Chairman, Committee on Merchant Marine and Fisheries,  
House of Representatives.*

DEAR MR. CHAIRMAN: This is in reply to your request for our comments on H.R. 3304, a bill "To amend the Act of August 27, 1954 (commonly known as the Fishermen's Protection Act) to conserve and protect Atlantic salmon of North American origin."

This Department defers to other agencies more directly concerned for specific recommendations on the proposed bill.

The bill provides that, when the Secretary of Commerce determines that nationals of a foreign country are conducting fishing operations in a manner which diminishes the effectiveness of domestic conservation programs of Atlantic salmon of North American origin, the Secretary of the Treasury shall prohibit the importation into the United States of fish products of the offending country. The prohibition would also apply to fish product processed by persons subject to the jurisdiction of such country and transshipped through third countries to the United States. The bill establishes penalties for the violation of the import prohibitions.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,  
*Acting Secretary.*

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
*July 13, 1971.*

HON. EDWARD A. GARMATZ,  
*Chairman, Committee on Merchant Marine and Fisheries, House of  
Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is in response to your request of February 19, 1971, for a report on H.R. 3304, a bill to amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act) to conserve and protect Atlantic salmon of North American origin, and your request of March 31, 1971, for a report on H.R. 6413, a bill "To amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act), to strengthen the provisions therein relating to the protection of United States vessels on the high seas."

Our views on these bills are substantially those expressed in our report to you of this date on H.R. 978.

Sincerely,

(s) ELLIOT L. RICHARDSON,  
*Secretary.*



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
*July 13, 1971.*

HON. EDWARD A. GARMATZ,  
*Chairman, Committee on Merchant Marine and Fisheries, U.S. House  
of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is in response to your request of February 16, 1971 for a report on H.R. 978, a bill to amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act), to strengthen the provisions therein relating to the protection of United States vessels on the high seas.

The bill provides that if the Secretary of State determines that a foreign country will not pay claims or is not negotiating in good faith after action has been taken by the Secretary of State under Section 5 of the Fishermen's Protective Act, he shall certify such fact to the Secretary of the Treasury. Section 5 of the Fishermen's Protective Act provides that the Secretary of State shall take such action as he may deem appropriate to make and collect on claims against a foreign country for amounts expended by the United States because of the seizure of a United States vessel by such country. The Secretary of the Treasury would then be required to prohibit the importation of any fish or fishery products caught or processed by any person subject to the jurisdiction of the offending country including fish or fish products transshipped through third countries to the United States. Under the bill it would also be unlawful for any person subject to the jurisdiction of the United States to knowingly import or cause to be imported into the United States such fish or fish products.

Enforcement of the provisions of this bill would be the responsibility of the Secretary of the Treasury. Any person authorized to carry out enforcement activities involving provisions of this bill would be empowered to execute any warrant or process issued by any officer or court of competent jurisdiction.

All fish or fishery products brought or imported into the United States in violation of the provisions of this bill would be subject to forfeiture. Seized fish or fishery products could be disposed of pursuant to the order of a court, or, if perishable, in a manner prescribed by regulations of the Secretary of the Treasury.

H.R. 978 does not directly affect the program responsibilities of the Department of Health, Education, and Welfare. Our only interest in the bill relates to the provision of Section 8(d)(5) which authorizes the Secretary of the Treasury to prescribe by regulation the manner of disposing of perishable fish and fishery products which have been seized under the Act. We would assume that the regulations promulgated by the Secretary of the Treasury will be in accordance with the requirements of the Federal Food, Drug, and Cosmetic Act and the regulations promulgated thereunder by the Food and Drug Administration.

With this exception, the Department defers to the views of other Federal agencies as to the need for legislation to amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act).

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

(s) ELLIOT L. RICHARDSON,  
Secretary.

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THE GENERAL COUNSEL OF THE TREASURY,  
Washington, D.C., July 7, 1971.

HON. EDWARD A. GARMATZ,  
*Chairman, Committee on Merchant Marine and Fisheries,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 3304, to amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act) to conserve and protect Atlantic salmon of North American origin.

The proposed legislation would amend the Fishermen's Protective Act of 1967, as amended (22 U.S.C. 1971 et seq.), by adding a new section at the end thereof providing that when the Secretary of Commerce determines that nationals of a foreign country are conducting fishing operations in a manner or in such circumstances which diminish the effectiveness of domestic conservation programs of Atlantic salmon of North American origin, the Secretary of Commerce shall certify such fact to the Secretary of the Treasury, who shall then prohibit the bringing or importation into the United States of (1) any fish products of the offending country, and (2) fish products processed by any person subject to the jurisdiction of said country and transshipped through third countries to the United States. It would also make it unlawful for any person subject to the jurisdiction of the United States knowingly to bring or import into, or cause to be imported into, the United States any fish products prohibited by the Secretary of the Treasury.

It would provide punishment by fines, forfeiture of imported fish products, and condemnation and disposition under the Customs laws for forfeited property. The bill charges the Secretary of the Treasury with enforcement responsibility, empowers United States courts and United States Commissioners to issue warrants or other enforcement process, authorizes searches of vessels and arrests of persons subject to jurisdiction of the United States when committing a violation in the view or presence of any enforcement officer or when the latter has reason to believe the vessel or person is in violation, and provides for seizures of fish products.

The Department defers to the views of the Department of Commerce on the need for and advisability of the proposed legislation. However, extremely difficult enforcement problems would be likely to arise attending the discovery and identification of importations subject to the prohibition of the bill, particularly "fish products processed by any person subject to the jurisdiction of said country and transshipped through third countries to the United States."

The proposed legislation, at a minimum, should clearly define the class, status, and condition of persons who are to be deemed "subject to the jurisdiction of the offending country." By example, to show hypothetically the diverse prospects, it is pertinent that fishing and the processing of caught fish on the high seas or elsewhere may proceed under the flag of the country "A" employing a vessel master of country "B" with crew owing national allegiance to countries "C" and "D", using a vessel chartered to a person, company or corporation of country "E", involving transfers to a processing mother ship under the flag of country "F", and in country "G" eventual transshipment of the product to the United States on a cargo vessel of country "H".

The Department believes that enactment of H.R. 3304 would lead to additional and extremely burdensome administrative and enforcement problems.

The Customs territory of the United States within the Bureau of Customs' enforcement jurisdiction comprises the 50 States and the Commonwealth of Puerto Rico. The Virgin Islands (U.S.) is outside the Customs territory of the United States, although it is under the Department's jurisdiction for Customs purposes. The Bureau of Customs exercises no Customs enforcement responsibilities in the remaining areas included in the definition of the term "United States" in the bill. Therefore, appropriate provisions for enforcement responsibility in territories and possessions other than Puerto Rico and the Virgin Islands (U.S.), in the Canal Zone, and in the Trust Territory of the Pacific Islands should be added to the bill, in the event it receives favorable consideration.

The Treasury Department would be happy to cooperate with the Committee in drafting language that would minimize the administrative and enforcement problems outlined above.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

ROY T. ENGLERT,  
*Acting General Counsel.*

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OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
*Washington, D.C., July 8, 1971.*

HON. EDWARD A. GARMATZ,  
*Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 3304, a bill "To amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act), to conserve and protect Atlantic salmon of North American origin."

Under the Act (22 U.S.C. 1971 *et seq.*), as amended (Pub. L. 90-482, 82 Stat. 729), when an American-flag vessel is seized by a foreign country on the ground of rights or claims to territorial waters or on

the high seas which are not recognized by the United States and a fine, license or registration fee, or other direct charge must be paid to secure the vessel's release, the Secretary of the Treasury reimburses the owners for such costs. For a four-year period beginning in 1969 the Act also authorizes the establishment of a guaranty fund for commercial fishing vessels. The fund is administered by the Secretary of Commerce and financed through fees paid by participating vessel owners and appropriated funds. This program reimburses such owners for certain losses suffered as a result of the seizure and detention of such vessels while operating in disputed international waters, including (a) damage, destruction, loss, or confiscation of the vessel and its gear, (b) market value of fish spoiled or confiscated, and (c) not more than 50% of lost gross income.

The Act directs the Secretary of State to take appropriate action to collect claims against a foreign country for amounts expended by the United States under the Act because of the seizure of a vessel by a foreign country. If such claim is not paid within a specified period, the Secretary withholds, pending such payment, an amount equal to such payment from any funds programmed during a fiscal year for assistance to the government of such country. Amounts so withheld do not constitute satisfaction of such claims.

The bill would add to the Act a new § 8. It would provide that if the Secretary of Commerce certifies that fishing operations of foreign nationals diminish the effectiveness of domestic conservation programs of Atlantic salmon of North American origin, the Secretary of the Treasury shall prohibit the importation into the United States of fish or fishery products from the foreign country whose nationals engage in these practices. The bill makes detailed provisions for the enforcement of such embargoes by fines and forfeitures in accordance with the customs laws, except as otherwise provided in the bill.

Whether this legislation should be enacted involves policy considerations as to which the Department of Justice defers to the Departments of State and Treasury. There is attached a memorandum of technical comments on the bill.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,  
*Deputy Attorney General.*

MEMORANDUM OF TECHNICAL COMMENTS ACCOMPANYING THE REPORT  
OF THE DEPARTMENT OF JUSTICE ON H.R. 3304

1. On page 1, lines 3-7, change to read: "That the Fishermen's Protective Act of 1967 (68 Stat. 883, as amended, 82 Stat. 729) is amended by inserting at the end thereof the following new section:"

2. On page 3, line 14, substitute for the word "highest" the words "United States", so making it plain that the judges of the territorial courts there referred to are those of the district courts of the Virgin Islands and Guam, 48 U.S.C. 1405x and 1424, respectively.



3. On page 3, line 15, substitute for the word "court" the words "courts of American Samoa and". On June 2, 1967, the Secretary of the Interior ratified and approved, with an immaterial exception, the Revised Constitution of American Samoa which by its terms became effective on July 1, 1967. Article III, § 1, thereof established the High Court of American Samoa.

4. On page 4, line 10, delete the words "this provision of".

5. Section 8(d) (6) would expressly except from the provisions of 28 U.S.C. 2464 a stay of execution of process by the United States Marshal or other officer in seizures of fish and fishery products under § 8. That statute and the implementing Supplemental Admiralty Rule E(5) (c) of the Federal Rules of Civil Procedure establish a uniform procedure for such stay in seizures of property in an admiralty case upon the filing of a bond or stipulation in a specified amount. Under this procedure property in the Marshal's custody may be released forthwith upon his acceptance of a bond or stipulation signed by the party on whose behalf the property is detained or his attorney.

Ordinarily this procedure avoids the necessity for first obtaining the approval of the bond or stipulation by the district court. If the Rule were applicable to seizures under § 8, the Marshal could promptly release the fish and fishery products, generally perishable commodities, upon his acceptance of a bond or stipulation signed by the United States Attorney.

Section 8(d) (6) would, however, provide that such bond or stipulation for such release of fish and fishery products seized under § 8 must first be approved by the judge of the court or the United States Commissioner having jurisdiction of the offense. In some districts he may only be available at a place some distance from the port where fish or fishery products would be seized under § 8 or to which they would be brought after seizure for execution of process. The power of the Supreme Court to prescribe rules of procedure for the federal courts exists only in the absence of a relevant act of Congress. See *Palermo v. United States*, 360 U.S. 343, 353n (1959), and decisions there cited.

Since § 8(d) (6) would be a later enactment, it would supersede this rule in the case of seizures of fish and fishery products under § 8. In the absence of an adequate justification for denying the benefits of this Rule in the case of such seizures, the Department of Justice is of the view that § 8(d) (6) should be deleted from the bill. Moreover, its deletion would result in the maintenance of a uniform procedure in cases of stays of execution in seizures of property.

6. On page 5, line 14, change "its" to "their".

3. On page 3, line 15, substitute for the word "court" the words "court of American Samoa and". On June 2, 1967, the Secretary of the Interior ratified and approved, with an immediate exception, the Revised Constitution of American Samoa which in its terms became effective on July 1, 1967. Article III, § 1, thereof established the High Court of American Samoa.

4. On page 4, line 10, delete the words "this provision of". Section 8(d)(6) would expressly except from the provisions of 28 U.S.C. 2104 a stay of execution of process by the United States Marshal or other officer in seizures of fish and fishery products under § 2 of that statute and the implementing Supplemental Admiralty Rule 15(3)(c) of the Federal Rules of Civil Procedure establish a uniform procedure for such stay in seizures of property in an admiralty case upon the filing of a bond or stipulation in a specified amount. Under this procedure property in the Marshal's custody may be released forthwith upon his acceptance of a bond or stipulation signed by the party on whose behalf the property is detained or his attorney.

Originally this procedure avoids the necessity for first obtaining the approval of the bond or stipulation by the district court. If the rule were applicable to seizures under § 2, the Marshal could promptly release the fish and fishery products generally perishable commodities upon his acceptance of a bond or stipulation signed by the United States Attorney.

Section 8(d)(6) would, however, provide that such bond or stipulation for such release of fish and fishery products seized under § 2 must first be approved by the judge of the court or the United States Commissioner having jurisdiction of the offense. In some instances in which only be available at a place some distance from the port where fish or fishery products would be seized under § 2 or to which they would be brought after seizure for execution of process. The power of the Supreme Court to prescribe rules of procedure for the Federal courts was only in the absence of a relevant act of Congress. See *Powers v. Yates*, 350 U.S. 501 (1956), and decisions there cited.

Since § 8(d)(6) would be a later enactment, it would supersede the rule in the case of seizures of fish and fishery products under § 2 in the absence of an adequate justification for denying the benefit of this rule in the case of such seizures the Department of the Interior. It is the view that § 8(d)(6) should be deleted from the bill. Therefore, the deletion would result in the continuance of a uniform procedure in cases of stay of execution in seizures of property.

5. On page 5, line 14, change "it" to "his".



